

128. TAXATION

128.01. Definitions. Subdivision 1. The following words when used in this chapter shall have the meanings ascribed to them in this section, except where the content clearly indicates or requires a different meaning.

Subd. 2. "Director" means the director of finance of the city or agent.

Subd. 3. "Lodging" means the furnishing for a consideration of lodging and related services by a hotel, rooming house, tourist court, motel or trailer camp and of the granting of any similar license to use real property other than the renting or leasing thereof for a continuous period of 30 days or more.

Subd. 4. "Operator" means a person who provides lodging to others or any officer, agent or employee of such person.

Subd. 5. "Person" means any individual, corporation, partnership, association, estate, receiver, trustee, executor, administrator, assignee, syndicate, or any other combination of individuals. Whenever the term "Person" is used in any provision of this chapter prescribing and imposing a penalty, the term as applied to a corporation, association, or partnership, shall mean the officers, or partners thereof as the case may be.

Subd. 6. "Rent" means the total consideration valued in money charged for lodging whether paid in money or otherwise.

128.02. Imposition of Tax. There is hereby imposed a tax of four percent on the rent charged by an operator for providing lodging to any person after July 1, 2002. The tax shall be stated and charged separately and shall be collected by the operator from the lodger. The tax collected by the operator shall be a debt owed by the operator to the city and shall be extinguished only by payment to the city. In no case shall the tax imposed by this section upon an operator exceed the amount of tax, which the operator is authorized and required by this chapter to collect from a lodger.

128.03. Collections. Each operator shall collect the tax imposed by this chapter at the time the rent is paid. The tax collections shall be deemed to be held in trust by the operator for the city. The amount of tax shall be separately stated from the rent charged for the lodging and those persons paying the tax shall receive a receipt of payment from the operator.

128.04. Exceptions and Exemptions. Subdivision 1. Exceptions. No tax shall be imposed on rent for lodging paid by any officer or employee of a foreign government who is exempt by reason of express provisions of federal law or international treaty.

Subd. 2. Exemptions. An exemption shall be granted to any person as to whom or whose occupancy it is beyond the power of the city to tax. No exemption shall be granted except upon a claim therefore made at the time the rent is collected and such a claim shall be made in writing and under penalty of perjury on forms provided by the city. All such claims shall be forwarded to the city when the returns and collections are submitted as required by this chapter.

128.05. Advertising No Tax. It shall be unlawful for any operator to advertise or hold out or state to the public or any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent or that, if added, it or any part thereof will be refunded, except that in computing the tax to be collected amount of tax less than one half of one cent may be disregarded and amounts of tax with

one half cent or more may be considered an additional cent.

128.06. Payment and Returns. The taxes imposed by this chapter shall be paid by the operator to the city monthly not later than 25 days after the end of the month in which the taxes were collected. At the time of payment, the operator shall submit a return upon such forms and containing such information as the director with council approval may require. The return shall contain the following minimum information:

(1) The total amount of rent collected for lodging during period covered by the return.

(2) The amount of tax required to be collected and due for the period.

(3) The signature of the person filing the return or that of his agent duly authorized in writing.

(4) The period covered by the return.

The operator may offset against the taxes payable with respect to any reporting period, the amount of taxes imposed by this chapter previously paid as a result of any transaction the consideration for which become uncollectible during such reporting period, but only in proportion to the portion of such consideration which became uncollectible.

128.07. Examination of Return, Adjustments, Notices and Demands. The director shall, as soon as practicable after a return is filed, examine the same and make any investigation or examination of the records and accounts of the person making the return deemed necessary for determining its correctness. The tax computed on the basis of such examination shall be the tax to be paid. If the tax due is found to be greater than that paid, such excess shall be paid to the city within ten days after receipt of a notice thereof given either personally or sent by registered mail to the address shown on the return. If the tax paid is greater than the tax found to be due, the excess shall be refunded to the person who paid the tax to the city.

128.08. Refunds. Any person may apply to the director for a refund of taxes paid for a prescribed period in excess of the amount legally due for that period, provided that no application for refund shall be considered unless filed within two years after such tax was paid, or within three years from the filing of the return, whichever period is the longer. The director shall examine the claim and make and file written findings thereon denying or allowing the claim in whole or in part and shall mail a notice thereof by registered mail to such person at the address stated upon the return. Any allowance shall include interest on the excess determined at a rate of four percent per annum from the date such excess was paid or collected until the date it is refunded or credited. If such claim is allowed in whole or in part, the director shall credit the amount of the allowance against any taxes due under this chapter from the claimant and the balance of said allowance, if any, shall be paid by the director to the claimant.

129.09. Failure to File a Return. Subdivision 1. If any operator required by this chapter to file a return shall fail to do so within the time prescribed, or shall make, willfully or otherwise, an incorrect, false or fraudulent return, the operator shall, upon written notice and demand, immediately file such return or corrected return, and shall at the same time pay any tax due on the basis thereof. If such person shall fail to file such return or corrected return, the director shall make a return or corrected return, for such person from such knowledge and information as the director can obtain, and assess a tax on the basis thereof, which tax (less any payments theretofore made on account of the tax for the taxable period covered by such return) shall be immediately paid upon written notice and demand. Any such return or assessment made by the director shall be prima facie correct and valid, and such person

shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto.

Subd. 2. If any portion of a tax imposed by this chapter, including penalties thereon, is not paid within 30 days after it is required to be paid, the council shall direct the institution of such legal action as may be necessary to recover the amount due.

128.10. Penalties. Subdivision 1. If any tax imposed by this chapter is not paid within the time herein specified for the payment, or an extension thereof, there shall be added thereto a specific penalty equal to 10 percent of the amount remaining unpaid.

Subd. 2. In case of any failure to make and file a return within the time prescribed by this chapter, unless it is shown that such failure is not due to willful neglect, there shall be added to the tax in lieu of the 10 percent specific penalty provided in subdivision 1 above 10 percent if the failure is for not more than 30 days with an additional 5 percent for each additional 30 days or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate. If the penalty as computed does not exceed \$10, a minimum penalty of \$10 shall be assessed. The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the negligence, in which case the amount so added shall be collected in the same manner as the tax.

Subd. 3. If any person willfully fails to file any return or make any payment required by this chapter, or willfully files a false or fraudulent return or willfully attempts in any manner to evade or defeat any such tax or payment thereof, there shall also be imposed as a penalty an amount equal to 50 percent of any tax (less any amounts paid on the basis of such false or fraudulent return) found due for the period to which such return related. The penalty imposed by this subdivision shall be collected as a part of the tax, and shall be in addition to any other penalties provided by this chapter.

Subd. 4. All payments received shall be credited first to penalties, next to interest, and then to the tax due.

Subd. 5. The amount of tax not timely paid, together with any penalty provided by this section, shall bear interest at the rate of 8 percent per annum from the time such tax should have been paid until paid. Any interest and penalty shall be added to the tax and be collected as part thereof.

128.11. Administration of Tax. The director shall administer and enforce the assessment and collection of the taxes imposed by this chapter. The director shall cause to be prepared blank forms for the returns required by this chapter and shall distribute the same throughout the city and furnish them on application, but failure to receive or secure them shall not relieve any person from any obligation required of him under this chapter.

128.12. Examine Records. The director and agents or employees authorized in writing may examine the books, papers and records of any operator in order to verify the accuracy of any return made, or if no return was made, to ascertain the tax as provided in this chapter. Every such operator is directed and required to give to the said director or to this duly authorized agent or employee the means, facilities and opportunity for such examinations and investigations as are hereby authorized.

128.13. Confidential Information. No officer or employee of the city shall divulge or otherwise make known in any manner any particulars disclosed in any return required by this chapter, or any information concerning the affairs of the person making the return acquired from such person's records, officers, or employees while performing an examination or audit, except in connection with a proceeding involving taxes due under this chapter from the

person making such return. Nothing herein contained shall be construed to prohibit the director from publishing statistics so classified as not to disclose the identity of particular returns and the contents thereof.

Notwithstanding the above provisions of this section, the city may enter into an agreement providing for the administration and collection of the tax imposed by this chapter by the Minnesota department of revenue and its officers and agents.

128.14. Contract with State. The director is authorized to confer with the Minnesota commissioner of revenue to the end that an agreement between the city and the commissioner of revenue may be entered into for the purpose of providing for the administration and collection of the taxes imposed by this chapter. Such an agreement shall not become effective before being presented to the council for its approval as provided by this chapter, and when so approved the tax imposed by this chapter shall be collected and administered pursuant to the terms of said agreement.

128.15. Violations. Any person who shall refuse to make a return required by this chapter; or who shall refuse to pay the tax, or who shall refuse to remit the taxes collected or any penalty or interest imposed by this chapter, or who shall refuse to permit the director or any duly authorized agents or employees to examine the books, records and papers under his or her control, or who shall willfully make any incomplete, false or fraudulent return, or who shall attempt to do anything whatsoever to avoid a full disclosure of the amount of taxes imposed by this chapter, shall be guilty of a misdemeanor.

128.16. Permits. Subdivision 1. Every operator doing business in the city shall file with the director an application for a permit and if such operator has more than one place of business where lodging is furnished to others, an application for each place of business must be filed. Every application for a permit shall be made upon a form prescribed by the director and shall set forth the name under which the applicant intends to transact business, the location of its place or places of business, and such other information as the director may require. The application shall be filed by the owner, if a natural person; by a member or partner, if the owner be an association or partnership; by a person authorized to sign the application, if the owner be a corporation.

Subd. 2. The director shall issue to each applicant a separate permit for each place of business within the city. A permit shall be valid until revoked but shall not be assignable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the place for which issued.

128.17. Revocation of Permit. Whenever any person fails to comply with any provision of this chapter, the director, upon hearing, after giving the person 30 days notice in writing specifying the time and place of hearing and the reason for the proposed revocation and requiring such person to show cause why the permit or permits should not be revoked, may for reasonable cause, revoke or suspend any one or more of the permits held by such person. The notice may be served personally or sent by registered mail to the address shown on such person's return. The director shall not issue a new permit after revocation except upon application accompanied by reasonable evidence of the intention of the applicant to comply with the provisions of this chapter.

128.18. Rentals Without Permits, Violations. Any person who engages in the business of renting lodgings to others without the required permit or permits, and each officer of any corporation which so engages in business, shall be guilty of a misdemeanor.

128.19. Administration by State. Upon agreement entered into with the commissioner of revenue, state of Minnesota, for the administration and enforcement of the

provisions of this chapter, the commissioner of revenue shall be empowered to exercise all authority of the director as contained in this chapter. In order to provide for the administration and collection of the tax by the commissioner of revenue, the following rules and regulations and statutory provisions are hereby adopted by reference, and to the extent that the provisions of said statutes and rules and regulations are in conflict with the provisions of this chapter, the provisions of said statutes and rules and regulations shall prevail: the rules and regulations adopted by the commissioner of revenue under authority of Minnesota Statutes, Section 297A.29 which are in force and effect on the effect date of this ordinance, and Minnesota Statutes, section 297A.03, 297A.04, 297A.06, 297A.08, 297a.26, 297A.27, 297A.30 through 297A.37, and 297A.39 through 297A.43.

Only those provisions of the foregoing rules, regulations and statutes, which are within the authority of the council to enact into ordinance are adopted by reference by this section.

(1600, 7/6/71; 1610, 8/16/71; 2038, 4/16/79; 3488, 6/3/02)

ROCHESTER CODE OF ORDINANCES
